

# **EXHIBIT FF**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16 CR 746 (PKC)

5 KEITH WELLNER,

6 Defendant.

7  
8 New York, N.Y.  
9 December 18, 2017  
10 10:47 a.m.

11 Before:

12 HON. P. KEVIN CASTEL

13 District Judge

14 APPEARANCES

15 JOON H. KIM  
16 Acting United States Attorney for the  
17 Southern District of New York

EDWARD IMPERATORE

17 ROBERT W. ALLEN

18 Assistant United States Attorneys

19 LAW OFFICES OF GORDON MEHLER, P.L.L.C.

Attorney for Defendant

20 GORDON MEHLER  
21  
22  
23  
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25

(In open court; case called)

THE COURT: This is United States of America against Keith Wellner. For the government.

MR. IMPERATORE: Good morning, your Honor.

Edward Imperatore and Robert Allen for the government. With us at counsel table is Special Agent Joseph Strawman of the FBI.

THE COURT: Good morning.

And for the defendant.

MR. MEHLER: Good morning, your Honor.

Gordon Mehler M-E-H-L-E-R, 747 Third Avenue, New York New York 10017.

THE COURT: Good morning, Mr. Mehler. And good morning, Mr. Wellner.

THE DEFENDANT: Good morning.

THE COURT: Mr. Wellner, I've been told that you wish to enter a plea of guilty to several counts of the indictment, Counts One through Six. And before I can accept a guilty plea from you I must be satisfied that you understand the rights you would have if this case went to trial and the rights you're giving up by pleading guilty. Also, I must be satisfied that there is a factual basis for your plea of guilty and you understand the consequences of the plea of guilty.

So, in a moment, I'm going to have the clerk place you under oath and I'm going to ask you certain questions and

1 inform you of certain rights. If I ask you something or I tell  
2 you something and you don't quite understand, please let me  
3 know and I'll put it into different words. Also, if at any  
4 point in this proceeding you wish to speak in private with your  
5 lawyer I will give you the opportunity to do that.

6 Do you understand all that?

7 THE DEFENDANT: Yes, I do. Thank you, your Honor.

8 THE COURT: Please stand and the clerk will administer  
9 the oath.

10 (Defendant sworn)

11 THE COURT: Now, Mr. Wellner, you're now under oath  
12 and your answers to my questions are subject to the penalties  
13 of perjury or of making a false statement if you do not answer  
14 truthfully. Also, anything you say today may be used in such a  
15 prosecution.

16 Do you understand all that?

17 THE DEFENDANT: I do.

18 THE COURT: How old are you, sir?

19 THE DEFENDANT: Fifty.

20 THE COURT: And how far did you go in school?

21 THE DEFENDANT: I have two postgraduate degrees.

22 THE COURT: What are they in?

23 THE DEFENDANT: One's in law, a JD in law; and one is  
24 an MBA in business.

25 THE COURT: Are you now or have you recently been



1 under the care of a medical doctor?

2 THE DEFENDANT: I am under the care of a medical  
3 doctor.

4 THE COURT: For what condition?

5 THE DEFENDANT: Just general anxiety related.

6 THE COURT: What type of medication do you take?

7 THE DEFENDANT: I currently take anti anxiety  
8 medication and anti depressive medication.

9 THE COURT: Do those medications affect the clarity of  
10 your thinking?

11 THE DEFENDANT: No, they don't.

12 THE COURT: Have you been under the care of a  
13 psychiatrist or been treated for a mental illness other than  
14 what you've described to me so far?

15 THE DEFENDANT: No.

16 THE COURT: Ever been addicted to any substance,  
17 alcohol, marijuana, prescription medications, anything?

18 THE DEFENDANT: No.

19 THE COURT: How do you feel today?

20 THE DEFENDANT: I feel fine. Thank you.

21 THE COURT: Do you understand what's happening?

22 THE DEFENDANT: I do.

23 THE COURT: Mr. Mehler, any doubt's as to your  
24 client's competence to proceed?

25 MR. MEHLER: None at all, your Honor.

1 THE COURT: Based on his responses to my questions and  
2 my observations I find that the defendant is fully competent to  
3 enter an informed plea in this case.

4 Now, Mr. Wellner, have you taken advantage of the  
5 opportunity to discuss this case and the charges and how you  
6 might go about defending the charges with your lawyer,  
7 Mr. Mehler?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Have you had enough time to consider all  
10 of your options in this case?

11 THE DEFENDANT: Yes, I have.

12 THE COURT: Are you satisfied with your lawyer's  
13 representation of you?

14 THE DEFENDANT: Yes, I am.

15 THE COURT: I'm now going to explain to you the rights  
16 you would have if this case went to trial and the rights you're  
17 giving up by pleading guilty. Under the Constitution and laws  
18 of the United States, you are entitled to a speedy and public  
19 trial by an impartial jury on the charges contained in the  
20 indictment.

21 Do you understand that?

22 THE DEFENDANT: I do.

23 THE COURT: At such a trial you would be presumed to  
24 be innocent. You would not have to prove that you were  
25 innocent. The government would be required to prove each

1 element of each crime by proof beyond a reasonable doubt.

2 Before you could be convicted of any charge, a jury would have  
3 to find unanimously that you were guilty.

4 Do you understand all that?

5 THE DEFENDANT: I do.

6 THE COURT: If there were a trial, at every stage of  
7 the case you would be entitled to be represented by a lawyer  
8 and if you could not afford a lawyer, one would be appointed at  
9 public expense.

10 Do you understand all that?

11 THE DEFENDANT: I do.

12 THE COURT: If there were a trial, the witnesses for  
13 the government would have to come to court to testify. You  
14 would be able to see and hear them. Your lawyer could  
15 cross-examine them. Your lawyer could object to evidence  
16 offered by the government. Your lawyer could present evidence  
17 and could ask the Court to compel witnesses to appear at trial  
18 on your behalf.

19 Do you understand all that?

20 THE DEFENDANT: I do.

21 THE COURT: If there were a trial, you would have the  
22 right to testify if you chose to do so. You could come up here  
23 and take the witness stand. Also, you would have the right not  
24 to testify and no one would be permitted to draw any inference  
25 or suggestion of guilt from the fact that you decided not to

1 testify.

2 Do you understand that?

3 THE DEFENDANT: I do.

4 THE COURT: Now, if there were a trial and the jury  
5 found you guilty, you would have the right to appeal that  
6 finding.

7 Do you understand that?

8 THE DEFENDANT: I do.

9 THE COURT: Now, those are the rights you would have  
10 if you went to trial. If I accept a guilty plea from you there  
11 will be no trial. You will proceed to the sentencing phase in  
12 which the Court will determine the punishment to be imposed on  
13 you. Even now you have the right to change your mind. Instead  
14 of pleading guilty, you may plead not guilty and go to trial.

15 Do you wish to plead not guilty and go to trial?

16 THE DEFENDANT: No, I do not.

17 THE COURT: Now, I'm going to go through the charges  
18 and the maximum punishment.

19 Count One of the indictment charges you with  
20 conspiracy to commit investment adviser fraud and securities  
21 fraud from in or about 2011 through in or about 2012.

22 Do you understand that's what you're charged with?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: The maximum penalty on Count One is five  
25 years of imprisonment, a maximum term of three years of

1 supervised release, a maximum fine of the greatest of \$250,000  
2 or twice the gross pecuniary gain derived from the offense, or  
3 twice the gross pecuniary loss to a person other than yourself  
4 as a result of the offense, and a mandatory \$100 special  
5 assessment.

6 Do you understand all that?

7 THE DEFENDANT: I do.

8 THE COURT: Counts Two and Three of the indictment  
9 each charge you with investment advisor fraud from in or about  
10 2011 through in or about 2012. Each of Counts Two and Three  
11 carry a maximum of -- maximum sentence of five years  
12 imprisonment, a maximum term of three years of supervised  
13 release, a maximum fine of the greatest of \$250,000, twice the  
14 gross pecuniary gain derived from the offense, or twice the  
15 gross pecuniary loss to a person other than yourself as a  
16 result of the offense, and a mandatory \$100 special assessment.

17 Do you understand that that's the maximum penalty on  
18 Count Two and it's also separately the maximum penalty on Count  
19 Three.

20 Do you understand all of that?

21 THE DEFENDANT: I do.

22 THE COURT: Do you understand that Counts Four and  
23 Five charge you with securities fraud from in or about 2011  
24 through in or about 2012?

25 Do you understand that?



1 THE DEFENDANT: Yes, I do, your Honor.

2 THE COURT: Do you understand that each of Counts Four  
3 and Five carry a maximum sentence of 20 years imprisonment, a  
4 maximum term of three years of supervised release, a maximum  
5 fine of the greatest of \$5 million, twice the gross pecuniary  
6 gain derived from the offense, or twice the gross pecuniary  
7 loss to a person other than the defendant as a result of the  
8 offense, and a mandatory \$100 special assessment?

9 Do you understand all of that?

10 THE DEFENDANT: Yes, your Honor, I do.

11 THE COURT: Do you understand that Count Six of the  
12 indictment charges you with conspiracy to commit wire fraud  
13 from in or about 2011 through in or about 2012?

14 Do you understand that?

15 THE DEFENDANT: I do.

16 THE COURT: Do you understand that Count Six carries a  
17 maximum sentence of 20 years imprisonment, a maximum term of  
18 three years supervised release, a maximum fine of the greatest  
19 of \$250,000 or twice the gross pecuniary gain derived from the  
20 offense or twice the gross pecuniary loss to a person other  
21 than yourself as a result of the offense, and a mandatory \$100  
22 special assessment?

23 Do you understand all of that?

24 THE DEFENDANT: I do, your Honor.

25 THE COURT: In addition to the foregoing, the Court

1 must order restitution to any person who I find was injured by  
2 reason of your criminal conduct.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor, I do.

5 THE COURT: All right. One moment, please.

6 (Pause)

7 Mr. Mehler, is your client prepared to admit the  
8 forfeiture allegations in paragraphs 52 and 53 of the  
9 indictment?

10 MR. MEHLER: Yes, he is, your Honor. I would point  
11 out that there was \$120,000 that he received and disgorged  
12 before this even became a criminal investigation.

13 THE COURT: That may be the case but the question for  
14 today's purposes is whether he admits to the forfeiture  
15 allegation or denies the forfeiture allegation; and if he  
16 admits it, then the amount of forfeiture will be determined at  
17 another point in time and there is no understanding or  
18 agreement as to the amount of that forfeiture as I understand  
19 it. Is that correct?

20 MR. MEHLER: Yes. That's correct. That's correct,  
21 your Honor.

22 THE COURT: Do you understand that, Mr. Wellner?

23 THE DEFENDANT: I do.

24 THE COURT: And as I've told you, the Court must order  
25 that you make restitution to any person I find was injured by

1 reason of your criminal conduct.

2 Do you understand that?

3 THE DEFENDANT: I do.

4 THE COURT: Now, with respect to supervised release,  
5 there are terms and conditions attached to it; and if you do  
6 not live up to those terms and conditions you can be returned  
7 to prison for the full period of supervised release.

8 So, say you get a prison term to be followed by a  
9 period of three years supervised release and you finish the  
10 prison term and you're on supervised release and you live up to  
11 the terms of supervised release for two years but then you  
12 violate one of the provisions. You may be returned to prison  
13 for a full period of three years.

14 Do you understand that?

15 THE DEFENDANT: I do.

16 THE COURT: Mr. Wellner, are you a U.S. citizen?

17 THE DEFENDANT: I am.

18 THE COURT: By pleading guilty you may give up, in  
19 fact, you will give up other valuable civil rights, such as the  
20 right to vote, to hold public office, to sit on a jury, to  
21 possess a firearm, to hold certain other licenses, and to  
22 receive government benefits, certain government benefits.

23 Do you understand that?

24 THE DEFENDANT: I do.

25 THE COURT: Are you serving any other sentence, state



1 or federal, or being prosecuted in any other court for any  
2 other crime?

3 THE DEFENDANT: No, I am not.

4 THE COURT: In sentencing you, I will receive a  
5 presentence report prepared by the office of probation that  
6 gives me background information and a recommended range of  
7 sentence under the sentencing guidelines. After hearing from  
8 your lawyer and from the government, I will make my own  
9 determination of the correct guideline range that applies in  
10 this case. Even after determining the correct guideline range  
11 I need not follow it and can sentence you all the way up to the  
12 statutory maximum. The guidelines are advisory and they are  
13 not binding on the court. They are one of the factors that the  
14 Court takes account of in determining a sentence under a  
15 statute which is commonly referred to as Section 3553(a).

16 Do you understand all that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: You will only be permitted to appeal or  
19 collaterally attack a sentence on the basis that the sentence  
20 is unreasonable or contrary to law.

21 Do you understand that?

22 THE DEFENDANT: I do.

23 THE COURT: Now, I understand there has been a plea  
24 agreement reached between you and the government and it's  
25 reflected in a five-page letter agreement on the letterhead of

1 the U.S. Department of Justice bearing a date of November 28,  
2 2017 and addressed to Mr. Mehler.

3 I'm going to ask the clerk to place that document in  
4 front of you.

5 Take a look at it and tell me if that is your plea  
6 agreement with the government.

7 THE DEFENDANT: It is, your Honor.

8 THE COURT: Is that your signature on the last page?

9 THE DEFENDANT: It is, your Honor.

10 THE COURT: Did you read it before you signed it?

11 THE DEFENDANT: Yes, I have.

12 THE COURT: Did you discuss it with your lawyer before  
13 you signed it?

14 THE DEFENDANT: Yes, I have.

15 THE COURT: Did you understand it before you signed  
16 it?

17 THE DEFENDANT: Yes, I did.

18 THE COURT: Has anyone threatened you or forced you in  
19 any way to enter into the plea agreement or to plead guilty?

20 THE DEFENDANT: No, they have not.

21 THE COURT: Has anyone given you anything of value or  
22 promised you anything in order to get you to enter into the  
23 plea agreement or to plead guilty?

24 THE DEFENDANT: No, they have not.

25 THE COURT: Does the plea agreement contain all of

1 your understandings with the government?

2 THE DEFENDANT: Yes, it does.

3 THE COURT: I want you to know that any calculation,  
4 estimate, or prediction that anyone has made to you as to what  
5 sentence I might give you is not binding on me, not binding on  
6 the Court, and if it turns out to be wrong you will not be  
7 permitted to withdraw your guilty plea.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, one of the features of your agreement  
11 with the government is that you have agreed to provide the  
12 government with substantial assistance and truthful cooperation  
13 including testifying if asked to do so; is that correct?

14 THE DEFENDANT: That is correct.

15 THE COURT: It's up to the government, not up to me,  
16 to decide whether your cooperation has been substantial enough  
17 for the government to ask that I take account of it in  
18 sentencing. I cannot second guess that decision. But if they  
19 do ask me to take account of substantial assistance, it is up  
20 to me, up to the Court to decide whether to grant their  
21 request. And if I do take account of your substantial  
22 assistance it's up to me to decide how much weight or  
23 consideration to give to it.

24 Do you understand all of that?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: If the government declines to make such a  
2 motion or request or if they do but I decline to accept their  
3 recommendation or grant their motion, you will not be permitted  
4 to withdraw your plea of guilty.

5 Do you understand all of that?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Now, I'm going to have the government  
8 layout the elements of the six crimes to which you've offered  
9 to plead guilty and this is -- this would be in summary what  
10 the government would have to prove if the case went to trial as  
11 well as the manner in which they would prove it.

12 MR. IMPERATORE: Yes, your Honor.

13 Count One of the indictment charges the defendant,  
14 Keith Wellner, with conspiracy to commit investment advisor  
15 fraud and securities fraud, in violation of 18 U.S.C. Section  
16 371.

17 The elements of the conspiracy are as follows:

18 First, that two or more persons entered into the  
19 unlawful agreement charged in the indictment in Count One; and  
20 second, that the defendant knowingly and willfully joined in  
21 that agreement; and third, that one of the members of the  
22 conspiracy committed at least one of the overt acts charged in  
23 the indictment and that the overt act was committed to further  
24 some objective of the conspiracy.

25 There are two charged objects of the conspiracy

1 charged in Count One. The first object is to commit investment  
2 advisor fraud in violation of 15 U.S.C. Sections 80b-6 and  
3 80b-17.

4 That crime has five elements:

5 First, that the investment advisor named in the  
6 indictment, Albert Hallac was, in fact, an investment advisor;

7 Second, that the investment advisor did one of the  
8 following: (a) employed a device, scheme or artifice to  
9 defraud an actual or prospective investor advisory client; (b)  
10 engaged in a transaction, practice, or course of business which  
11 operated as a fraud and deceit upon those investment advisory  
12 clients or prospective investment advisory clients; or (c)  
13 engaged in an act, practice, and course of business that was  
14 fraudulent, deceptive and manipulative;

15 Third, that the investment advisor, again Albert  
16 Hallac, devised or participated in such alleged device, scheme  
17 or artifice to defraud, or engaged in such alleged transaction,  
18 practice, or course of business, knowingly, willfully, and with  
19 the intent to defraud;

20 Fourth, that the investment advisor, Albert Hallac,  
21 employed such alleged device, scheme, or artifice to defraud or  
22 engaged in such alleged transaction, practice or course of  
23 business by use of the mails or an instrumentality of  
24 interstate commerce; and

25 Fifth, that the defendant aided and abetted the



1 investment adviser willfully and knowingly associated himself  
2 in some way with the crime, and by willfully and knowingly  
3 seeking by some act to help make the crime succeed.

4 The second element or, excuse me, the second object of  
5 the conspiracy charged in Count One is to commit securities  
6 fraud in violation of 15 U.S.C. sections 78j(b) and 78ff, and  
7 to violate Title 17 of the Code of Federal Regulations Section  
8 240.10b-5. That rule sets forth three elements of securities  
9 fraud:

10 First, that in connection with the purchase or sale of  
11 stock or shares in a company the defendant did any one or more  
12 of the following:

13 A. employed a device, scheme or artifice to defraud,  
14 made an untrue statement of a material fact or omitted  
15 to state a material fact which was made -- which made what was  
16 said under the circumstances misleading, or

17 Engaged in an act, practice, or course of business  
18 that operated or would operate as a fraud or deceit upon a  
19 purchaser or seller;

20 Second, that the defendant acted unlawfully,  
21 knowingly, willfully and with the intent to defraud; and

22 Third, that the defendant used or caused to be used  
23 any means or instruments of transportation or communication in  
24 interstate commerce or the use of the mails, or of any facility  
25 of any national securities exchange in furtherance of the

1 fraudulent conduct.

2 Counts Four and Five -- excuse me. Counts Two and  
3 Three charge the defendant with aiding and abetting the  
4 investment advisor fraud of Albert Hallac, in violation of  
5 Sections 80b-6 and 80b-17 of Title 15 of the United States  
6 Code, and Section 2 of Title 18 of the United States Code.

7 The elements of investment advisor fraud are the same  
8 as I just read with respect to the investment advisor fraud  
9 object of the conspiracy charged in Count One.

10 Counts Four and Five of the indictment charge the  
11 defendant with securities fraud in violation of sections 78j(b)  
12 and 78ff of Title 15 of the U.S. Code.

13 THE COURT: Is it Title 15?

14 MR. IMPERATORE: Yes, your Honor, for securities fraud  
15 it's Title 15.

16 THE COURT: All right. Because in your plea  
17 agreement -- okay. I see. I misread it. You're correct.  
18 Thank you.

19 MR. IMPERATORE: And Title 15 of the United States  
20 Code and Section 240.10b-5 of Title 17 of the Code of Federal  
21 Regulations. The elements of securities fraud are the same as  
22 I just read with respect to the securities fraud object of the  
23 conspiracy charged in Count One.

24 Count Six of the indictment charges Keith Wellner, the  
25 defendant, with conspiracy to commit wire fraud in violation of

1 Section 1349 of Title 18 of the United States Code.

2 The elements of the conspiracy are:

3 First, that two or more persons entered into an  
4 agreement charged in the indictment, here to commit wire fraud;  
5 and

6 Second, that the defendant knowingly and willfully  
7 became a member of conspiracy.

8 The object of the conspiracy charged in Count Six is  
9 wire fraud in violation of Title 18 United States Code Section  
10 1343.

11 There are three elements of wire fraud.

12 First, that there was a scheme or artifice to defraud  
13 or to obtain money or property by materially false and  
14 fraudulent pretenses, representations or promises as alleged in  
15 the indictment;

16 Second, that the defendant knowingly participated in  
17 the scheme or artifice to defraud with knowledge of its  
18 fraudulent nature and with specific intent to defraud; and

19 Third, that in the execution of that scheme the  
20 defendant used or caused the use of the interstate wires, in  
21 other words, wires between states.

22 So those are the elements of the six charges against  
23 the defendant in the indictment.

24 In addition, the government must prove by a  
25 preponderance of the evidence that venue is proper in the



1 Southern District of New York as to each count.

2 Your Honor, in terms of the proof against the  
3 defendant, the government would prove that the defendant is  
4 guilty beyond a reasonable doubt as to each count in the  
5 indictment. The evidence would consist of both documents and  
6 witness testimony. Documents would include, among other  
7 things, the defendant's e-mail communications, investment  
8 documentation, and bank and brokerage records reflecting the  
9 disbursement of investor funds. Witnesses would include, among  
10 others, a cooperating witness, investor victims, law  
11 enforcement witnesses, and other percipient witnesses.

12 THE COURT: Mr. Wellner, please tell me in your own  
13 words that leads you to believe that you are guilty of each of  
14 these six crimes.

15 THE DEFENDANT: Good morning, your Honor.

16 From December 2007 until May/June 2012, I was the  
17 chief operating officer, general counsel and chief compliance  
18 officer of Weston Capital Management, LLC. Weston Capital  
19 Management had a wholly-owned subsidiary, Weston Capital Asset  
20 Management, LLC, which was a registered investment advisor. I  
21 served in similar capacities for this registered investment  
22 advisor. Each of these Weston entities had offices in  
23 New York, Connecticut and Florida. Weston managed  
24 approximately ten hedge funds for its investors. My plea today  
25 involves three of those hedge funds mainly the partners fund 2

1 or P2, the Wimbledon financing fund or WFF, and Wimbledon TT or  
2 just TT. Because of the complexity of the transactions, I have  
3 made some notes that I will be referring to today.

4 In early 2010, WFF entered into a transaction with  
5 Gerova Financial Group, in which WFF exchanged all of its  
6 assets for stock of Gerova. By early 2011, Gerova was  
7 essentially insolvent and the WFF stock became worthless. In  
8 the spring of 2011, Albert Hallac and Jeffrey Hallac were  
9 approached by David Bergstein with a proposal for WFF to  
10 receive some of its former assets back from Gerova in exchange  
11 for returning the worthless Gerova stock. In order to  
12 accomplish this exchange, Bergstein proposed a complicated  
13 transaction where he would arrange for a loan to be taken from  
14 a large European bank and secured by the assets received back  
15 by WFF and deposited into a newly formed entity. This entity  
16 was called Arius Libra. This entity was majority owned by WFF  
17 and approximately 34 percent owned by Mr. Bergstein himself.  
18 When the loan that Mr. Bergstein promised did not come to  
19 fruition within the necessary timeframe, in August 2011,  
20 Mr. Bergstein convinced Albert Hallac to have P2 provide a  
21 loan. This loan was for the benefit of WFF. I committed a  
22 fraud in assisting Mr. Hallac in negotiating and agreeing to  
23 have P2 provide the loan to Arius Libra, which was ultimately  
24 for the benefit of WFF. While I believed that this loan would  
25 be repaid, the existence of the loan was material information

1 that was not disclosed to either investors in P2 or WFF.  
2 Mr. Bergstein continued to draw monies under the P2 loan  
3 through November 2011 and I assisted and agreed with Mr. Hallac  
4 in providing those subsequent monies to Mr. Bergstein. The  
5 failure to disclose this loan was a conflict of interest in  
6 that the loan was made by P2, it was secured by the assets of  
7 Arius Libra, which were previous WFF assets, without the  
8 knowledge of either P2 or WFF investors, thus placing the  
9 interests of P2 and WFF investors at odds with each other.  
10 Prior to P2 making the loan to Arius Libra and for the benefit  
11 of WFF investors, P2 was invested in hedge fund securities and  
12 a portion of the monies from the liquidation of these hedge  
13 fund securities was used to fund the Arius Libra loan.

14 Additionally, in November 2011 Mr. Bergstein  
15 approached Mr. Hallac once again with another transaction,  
16 namely entering into a swap agreement with an entity that  
17 Mr. Bergstein controlled called Swartz IP Services, Inc. The  
18 Weston controlled fund that was to be the counterparty to the  
19 swap agreement was Wimbledon TT. In connection with entering  
20 into that swap agreement, I assisted and agreed with Albert  
21 Hallac, who had a fiduciary duty to TT investors, in committing  
22 a fraud on TT investors by helping to negotiate and approve the  
23 TT portfolio entering into an undisclosed swap transaction with  
24 Mr. Bergstein's entity, Swartz IP Services. The existence of  
25 this swap transaction was material information, should have

1 been disclosed, and created a conflict of interest through the  
2 ultimate use of the funds and additionally caused TT fund  
3 assets to be invested into an entity whose credit risk was  
4 substantially inferior to its prior investments. The money  
5 used to fund the swap was liquidated from certain hedge fund  
6 securities by Mr. Hallac.

7 All of the conduct described above involved the  
8 exchange of e-mails between people located in multiple states,  
9 including at least New York, Florida, and California. At least  
10 some of the conduct described above occurred while I was in  
11 Manhattan, New York City.

12 For all the conduct described above, I was aware that  
13 the conduct was wrong at the time I was doing it and the funds  
14 involved were used in a manner that was outside the stated  
15 mandate in the offering memoranda. In each case, I neither  
16 disclosed the material information to the relevant investors  
17 nor did I contact the fund's outside counsel and advise them of  
18 such information.

19 THE COURT: Thank you.

20 Does the government agree there's a sufficient factual  
21 predicate for a plea of guilty to Counts One through Six?

22 MR. IMPERATORE: Yes, your Honor.

23 And I'd like to just give a brief proffer on the  
24 securities at issue.

25 THE COURT: Yes.



1 MR. IMPERATORE: As to Count Four, the predicate  
2 securities are, first, the note between Weston Capital Partners  
3 Master Fund II and Arius Libra, Inc.; and, second, Weston's  
4 interest in the Sagil Latin America Opportunities Fund, which  
5 was redeemed on or about June 30, 2011.

6 As to Count Five, the predicate securities are:  
7 First, the Swartz IP Services group, Inc. Note Purchase  
8 Agreement, and any notes issued in accordance with it; and  
9 second, Weston's notional interest in the Tewksbury hedge fund  
10 and all agreements between Weston and Societe Generale entities  
11 executed in furtherance of Weston's interest.

12 THE COURT: All right.

13 Mr. Mehler, any basis to challenge the government's  
14 proffer?

15 MR. MEHLER: None, Your Honor.

16 THE COURT: All right.

17 MR. MEHLER: I believe the allocution is sufficient.

18 THE COURT: All right. Are you aware, Mr. Mehler, of  
19 any defense that would likely prevail at trial or any reason  
20 why your client should not be permitted to plead guilty?

21 MR. MEHLER: I am not aware of any reason or  
22 impediment.

23 THE COURT: All right.

24 Mr. Wellner, do you have any questions for me?

25 THE DEFENDANT: No, your Honor.

1 THE COURT: All right. With regard to Count One of  
2 the indictment, how do you plead, guilty or not guilty?

3 THE DEFENDANT: Guilty.

4 THE COURT: With regard to Count Two of the  
5 indictment, how do you plead, guilty or not guilty?

6 THE DEFENDANT: Guilty.

7 THE COURT: With regard to Count Three of the  
8 indictment, how do you plead, guilty or not guilty?

9 THE DEFENDANT: Guilty.

10 THE COURT: With regard to Count Four of the  
11 indictment, how do you plead, guilty or not guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: With regard to Count Five of the  
14 indictment, how do you plead, guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: With regard to Count Six of the  
17 indictment, how do you plead, guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: With regard to paragraphs 52 and 53 of the  
20 indictment containing the forfeiture allegations, do you admit  
21 those allegations or do you deny those allegations?

22 THE DEFENDANT: I admit them, your Honor.

23 THE COURT: Based upon your responses to my questions  
24 and my observations of your demeanor, I find that you know your  
25 rights, you know the consequences of pleading guilty and there

1 is a factual basis for your plea of guilty. Your plea of  
2 guilty and your admission to the forfeiture allegations are  
3 accepted. Further, I find that your plea agreement was  
4 knowingly and voluntarily entered into.

5 Now, I'm not going to order a presentence  
6 investigation report at this juncture. I will set a control  
7 date for sentencing but that may be and probably will be  
8 adjusted.

9 Eventually there will be a presentence investigation  
10 and it's important that you be candid, truthful and honest with  
11 the people who prepare the presentence report. Tell them the  
12 good things and the not-so-good things because the report will  
13 be important in my decision on sentencing. Before the day of  
14 sentencing, you'll have an opportunity to review that report.  
15 Go through it carefully. If there are mistakes, point them out  
16 to your lawyer so that he can point them out to me.

17 Let me give you a control date for sentencing. Any  
18 thoughts from the government on the when?

19 MR. IMPERATORE: Subject to the Court's views we might  
20 propose six months.

21 THE COURT: I'm going to set a control date for  
22 sentencing and it will be May 30 at 10 a.m.

23 Anything further from the government?

24 MR. IMPERATORE: No, your Honor.

25 THE COURT: Anything further from the defendant?

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1 MR. MEHLER: No, your Honor.

2 THE COURT: All right. Thank you all very much.

3 (Adjourned)

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